



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

This Opinion
Affirms Opinion

0-6251

October 7, 1960

Honorable Donald E. Short
County Attorney
Wichita County
Wichita Falls, Texas

Opinion No. WW-948

Re: Validity of using
"pasters" in voting
for write-in candi-
dates.

Dear Mr. Short:

Your request for an opinion on the above-captioned question reads as follows:

"I have had submitted to me a question of law which is very important in view of the forthcoming election. Due to the recent death of Commissioner Haynes there will be several write-in candidates for the office of County Commissioner, Precinct 4, Wichita County, Texas.

"Several of these candidates have expressed the intention of having stickers with their names thereon printed so that the voter may paste the sticker on the ballot instead of writing in the candidate's name.

"I am familiar with your opinion No. 0-6251 cited in the annotations of Article 6.06, Election Code, Vernon's Annotated Civil Statutes, but I would like to know if your opinion is the same in view of Article 6.06 as amended by the 55th Legislature."

Attorney General's Opinion 0-6251 (1944) held that a person may not vote for a write-in candidate by pasting onto the ballot a sticker bearing the candidate's name instead of writing in the name of the candidate. This holding was based on Article 2979, Revised Civil Statutes of 1925, which, after providing for certification of the name of a new nominee to the election board where a nominee had died or declined his nomination and the vacancy in the nomination had been filled, contained the following provision:

"* * * If such declination or death occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification. No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted." (Emphasis supplied.)

This provision, in identical language, now appears in Article 6.04 of the Election Code. You have asked in effect whether the prohibition in this article was repealed or modified by the amendment to Article 6.06 in 1957 (Ch. 338, Acts of the 55th Leg., 1957, amending Articles 6.05, 6.06 and 13.09 of the Election Code).

The primary purpose of the 1957 amendatory act was to eliminate the dual method for marking the ballot (placing an X beside the name of the chosen candidate or scratching out the names of all opposing candidates) which had been introduced in the Election Code of 1951 and to restore the "scratch" method as the only authorized method. The act also made certain other changes in the provisions relating to the form of the ballot and the directions for marking it, these changes being mainly by way of clarifying or more accurately stating existing provisions. It did not contain a repealing clause.

Article 6.06, as amended, reads as follows:

"Art. 6.06. How to mark ballot

"In all elections, general, special, or primary, the voter shall mark out the names of all candidates he does not wish to vote for. When party columns appear on a ballot, a voter desiring to vote a straight ticket may do so by running a line with a pencil or pen through all other tickets on the official ballot, making a distinct marked line through all tickets not intended to be voted; and when he desires to vote a mixed ticket, he shall do so by running a line through the names of such candidates as he desires to vote against. If the name of the person for whom the voter wishes to vote is not printed on the ballot, the voter shall mark through the names which appear on the ballot in that race and shall write in the name of the candidate for whom he wishes to vote in a general election

in the write-in column under the appropriate office title, and in a primary or special election in an appropriate space under the title of the office.

"The failure of a voter to mark his ballot in strict conformity with these directions shall not invalidate the ballot, and a ballot shall be counted in all races in which the intention of the voter is clearly ascertainable."

The last paragraph of Article 6.06 was added by the 1957 amendment, and is the provision prompting your opinion request. This paragraph is a legislative expression that the provisions of the preceding paragraph are directory and that a ballot shall be counted if the intention of the voter is clearly ascertainable although not marked "in strict conformity" with the manner outlined in that article. Cf. Moore v. Plott, 206 S.W. 958 (Tex.Civ.App. 1918); Longoria v. Longoria, 278 S.W.2d 885 (Tex.Civ.App. 1955); and Trout v. Loe, 325 S.W.2d 191 (Tex.Civ. App. 1959). In our opinion, the last paragraph of Article 6.06 states a rule of construction to be applied to the provisions of Article 6.06, and it does not authorize the counting of any vote which has been cast in a manner expressly prohibited by some other statute. It does not repeal or modify the provision in Article 6.04 prohibiting the use of pasters and the counting of names on pasters where their use is not expressly authorized in Article 6.04. The holding in Opinion O-6251 is still a correct statement of the law on the use of pasters in voting for write-in candidates.

SUMMARY

The rule of construction stated in the last paragraph of Article 6.06 of the Election Code, as amended in 1957, did not repeal or modify the prohibition against the use of pasters on official ballots and the counting of names on pasters where their use is not expressly authorized by Article 6.04 of the Election Code. A voter is not permitted to vote for a write-in candidate by pasting onto the ballot a sticker or paster bearing the candidate's name, and votes cast for a write-in candidate in this manner cannot be counted.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *Mary K. Wall*
Mary K. Wall
Assistant

Honorable Donald E. Short, page 4 (WW-948)

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore